

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

ANTONINA T. SOLIEN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:13-cv-4147
)	
CHARLES RICHARDSON)	
THOMPSON and CITY OF)	
WEAUBLEAU, MISSOURI,)	
)	
Defendants.)	

MOTION TO DISMISS AS TO DEFENDANT CHARLES THOMPSON AND
REQUEST FOR HEARING PURSUANT TO §563.074 RSMO

COMES NOW, defendant Charles Richardson Thompson, by and through attorneys of record, Keck & Austin, LLC, and moves this Honorable Court for an order dismissing the above styled matter for failure to state a claim upon which relief can be granted. In support of such motion, defendant states as follows: *to wit*

1. Plaintiff alleges that on April 18, 2011, she went to Weaubleau City Hall to obtain certain publicly available information from the city clerk.
2. Plaintiff alleges that while she was speaking to the city clerk, defendant Thompson came into City Hall and became agitated at seeing plaintiff.
3. Plaintiff alleges that on April 18, 2011, plaintiff was physically assaulted and battered by defendant Thompson while plaintiff was at Weaubleau City Hall.
4. Plaintiff alleges that the assault and battery consisted of defendant Thompson delivering a verbal tirade directed at plaintiff, grabbing plaintiff by her arms and dragging her out of City Hall, pushing her through the door onto the sidewalk.

5. Plaintiff alleges that she reported this incident to the Hickory County Sheriff's Department and that they investigated.

6. Plaintiff alleges that defendant Thompson was the duly elected and serving Mayor of Defendant City of Weaubleau, Missouri, on April 18, 2011.

7. The City of Weaubleau, Missouri is a fourth class city subject to the provisions of Chapter 79 of the Missouri Revised Statutes.

8. On April 18, 2011, plaintiff did arrive at the Weaubleau City Hall and had an encounter with defendant Thompson.

9. During this encounter, plaintiff became argumentative and was asked to leave the premises by defendant Thompson.

10. Plaintiff refused to leave the premises of the Weaubleau City Hall.

11. Plaintiff alleges that her removal from the Weaubleau City Hall constituted assault and battery.

SUGGESTIONS IN SUPPORT OF MOTION TO DISMISS

The language of §563.074 states that "a person who uses force as described in section 563.031, 563.041, 563.046, 563.051, 563.056, and 563.061 is justified in using such force and such fact shall be an absolute defense to criminal prosecution or civil liability." Section 563.031 provides the justification defense under the facts involved in this case. "A person may, subject to the provisions of subsection 2 of this section, use physical force upon another person when and to the extent he or she reasonably believes such force to be necessary to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful force by such other person, unless... (c) The aggressor is justified under some other provision of this chapter or other provision of law." Mayor Thompson had the duty and authority, under

Section 79.110, to use any force he did; therefore Section 563.074(c) applies to the facts of this case.

On April 18, 2011, defendant Thompson was the duly elected and serving Mayor of the City of Weaubleau, Missouri. As such, the provisions of Chapter 79 apply to defendant Thompson. Section 79.110 states:

The mayor and board of aldermen of each city governed by this chapter shall have the care, management and control of the city and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the constitution and laws of this state, and such as they shall deem expedient for the good government of the city, **the preservation of peace and good order**, the benefit of trade and commerce and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same.

(Emphasis added.)

Defendant Thompson was engaged in the preservation of peace and good order when he asked plaintiff to exit the premises on April 18, 2011 and she failed to do so. Further, the mayor of a fourth class city shall have the power to enforce laws. Pursuant to §79.200, “the mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and he shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty.”

The City of Weaubleau has an ordinance prohibiting disturbing the peace within the city of Weaubleau, Missouri, contained in Ordinance Number 95-H. Such ordinance was in effect on April 18, 2011. In pertinent part, Ordinance Number 95-H, section five states, “It shall be unlawful for any person to use or indulge in loud, unusual, profane, obscene, or insulting language or actions, or to challenge, fight, threaten, or offer to fight on any street, alley, or in any place of

business, public building, or other place in Weaubleau, Missouri.” Defendant Thompson was being active and vigilant in enforcing ordinance number 95-H on April 18, 2011 when he asked plaintiff to leave the premises of the City Hall.

Because the facts support defendant Thompson’s alleged use of force against plaintiff, defendant respectfully requests this Honorable Court to hold a §563.074 justification hearing, and upon a finding that defendant Thompson was justified in any alleged use of force against plaintiff, this matter should dismiss with prejudice and attorney fees and costs awarded herein to defendant.

WHEREFORE, defendant Thompson respectfully requests an Order of the Court for hearing under §563.074 and dismissal of the above styled matter, for his attorneys fees and costs expended herein and for such further relief as the court deems just and proper under the premises.

KECK & AUSTIN, L.L.C.

By: /s/Patricia A. Keck
Patricia A. Keck #42811
Jill Patterson #41610
3140 East Division
Springfield, Missouri 65803
Phone: 417-890-8989
Fax: 417-890-8990
pat@keckaustin.com
jill@keckaustin.com
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served by: ☒ filing electronically (ECF); ☐ Hand delivery; ☐ Fax; ☐ Overnight mail; ☐ Email; ☒ U.S. Mail, postage prepaid, on this 10th day of June 2013 to the following persons:

Joshua P. Jones
Collins & Jones, P.C.
PO Box 551
430 Market Street
Osceola, MO 64776

/s/Patricia A. Keck
Patricia A. Keck